

RICHARD P. WALKER

IBLA 81-292

Decided April 1, 1981

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, denying approval of two assignments of oil and gas lease NM-A-19243 (TX).

Vacated and remanded.

1. Oil and Gas Leases: Assignments or Transfers

Where two assignments are executed transferring complete record title of an oil and gas lease from the lessee to a second party and from him to a third party, where the assignments are submitted to the Bureau of Land Management for approval at the same time so that each will be effective on the same day, and where the third party has certified his qualifications to hold the lease, BLM need not refuse to approve the assignments for failure of the second party to submit a supplemental qualifications certification because, at no time, will the second party be the effective lessee and no interest in the lease has been retained by him.

APPEARANCES: Richard P. Walker, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard P. Walker has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 17, 1980, denying approval of two assignments of oil and gas lease NM-A-19243 (TX).

Oil and gas lease NM-A-19243 (TX) was issued to Bobby C. Holt with an effective date of July 1, 1978. On June 15, 1980, Holt executed an assignment of his entire interest in the lease to Jerry Thomas, Trustee. On June 16, 1980, Jerry Thomas, Trustee, executed a further assignment of the entire interest in the lease to Richard P. Walker, appellant herein. By transmittal dated September 8, 1980, appellant then submitted both assignments accompanied by the appropriate fees to BLM for approval.

On October 6, 1980, BLM sent to Jerry Thomas, Trustee, and appellant separate decisions requiring that each further reaffirm his qualifications to hold a lease by completing and returning a certification of qualifications form supplementing the certification on the assignment form itself. Appellant executed his certification statement and returned it to BLM, which received it on October 14, 1980. BLM never received any certification of qualifications from Jerry Thomas, Trustee. Therefore on December 17, 1980, BLM issued the decision appealed herein stating that the assignment to Jerry Thomas, Trustee, was denied approval for failure of the assignee to establish his qualifications to hold a lease and that the assignment to appellant was also denied approval as the assignor, Jerry Thomas, Trustee, held no assignable interest in oil and gas lease NM-A-19243 (TX).

In his statement of reasons, appellant first asserts that he filed his certification statement and continues: "I own no other federal oil and gas lease and was attempting to acquire title to the captioned lease in an individual capacity, therefore, I can see nothing in the aforementioned certification which would restrict my acquiring title to the captioned lease."

[1] BLM did not deny approval of appellant's assignment because of a lack of qualifications on the part of appellant. Rather, the denial occurred because appellant's assignor, Jerry Thomas, Trustee, did not file the certification form and as a result BLM did not approve the initial assignment from lessee Holt to Thomas. BLM concluded that the interest in the lease remained with Holt, and Thomas held no interest which he could assign to appellant.

Upon close review of the circumstances in this case, we can find no reason why both assignments could not have been approved as a practical matter. Under 30 U.S.C. § 187a (1976), a proposed assignment of an oil and gas lease filed in conformity with the regulations may be disapproved only for lack of qualification of the assignee or for lack of sufficient bond. Duncan Miller, 12 IBLA 201 (1973). Jerry Thomas, Trustee, certified as to his qualifications on the assignment form as is the normal practice. There is no evidence in the case file to show that he was not qualified to hold an oil and gas lease. Both assignments passed 100 percent interest in the lease and both assignments were filed for approval at the same time. Under 43 CFR 3106.3-3 both assignments will be effective on the same date, October 1, 1980, upon approval. As a result Jerry Thomas, Trustee, will never effectively be

the lessee of oil and gas lease NM-A-19243 (TX) and he would not retain any interest in the lease. Since appellant is qualified to hold the lease, we find no bar to approval of his assignment on the facts before us. 1/

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case file remanded for approval of the assignments.

Douglas E. Henriques
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

1/ We note that even if the assignments were disapproved, under the facts of this case, Bobby Holt would remain the lessee of record and the same result as we have reached could be attained by execution of assignments again and submitting them for approval. As no substantive challenge to anyone's qualifications has actually been made, BLM would approve the assignments albeit with a different effective date. We see no reason to generate the additional paperwork and expense by affirming the BLM decision.

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

I concur in the majority's disposition of this matter because it represents a practical, commonsense resolution of this particular case on its own peculiar facts. However, I do not think BLM erred in a purely legal sense in holding as it did, and I would caution the reader against reliance on this decision as precedent in any similar case. This case should not stand for the proposition that in any so-called "wash" sale of a lease, the middleman is excused from the obligation of certifying as to his qualifications.

Edward W. Stuebing
Administrative Judge

